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Attorneys for Defendants  
 COUNTY OF ALAMEDA, ALAMEDA  
 COUNTY SHERIFF'S OFFICE, SHERIFF  
 GREGORY J. AHERN, TIMOTHY  
 VALES, DAVID DRISCOLL, ROBERT  
 LAPOINT, and DAVID MCKAIG

UNITED STATES DISTRICT COURT  
 NORTHERN DISTRICT OF CALIFORNIA

UNITED UNION OF ROOFERS,  
 WATERPROOFERS, AND ALLIED  
 WORKERS – LOCAL 81 AFL-CIO, LEORY  
 CISNEROS, AND FRANCISCO GARCIA

Plaintiffs,

vs.

COUNTY OF ALAMEDA, ALAMEDA  
 COUNTY SHERIFF'S OFFICE, SHERIFF  
 GREGORY J. AHERN, in his official  
 capacity; TIMOTHY J. VALES (#104529),  
 DAVID A. DRISCOLL (#108967), ROBERT  
 LAPOINT (#843), and DAVID MCKAIG  
 (#364), individually and in their official  
 capacities; CASTRO VALLEY UNIFIED  
 SCHOOL DISTRICT; JO A. LOSS, KUNIO  
 OKUI, JOHN BARBIERI, JANICE  
 FRIESEN, and GEORGE GRANGER, in  
 their official capacities as members of the  
 Castro Valley Unified School District Board  
 of Education, SUPERINTENDENT JAMES  
 FITZPATRICK, in his official capacity;  
 SUSAN GOLDMAN, MICHAEL MILLER  
 and JERRY MACY, individually,

Defendants.

Case No.: 08-2281 BZ

**ANSWER TO COMPLAINT FOR  
 DAMAGES AND INJUNCTIVE AND  
 DECLARATORY RELIEF**

**DEMAND FOR JURY TRIAL**

Complaint Filed: May 1, 2008

Come now defendants COUNTY OF ALAMEDA, ALAMEDA COUNTY SHERIFF'S

1 OFFICE, SHERIFF GREGORY J. AHERN, TIMOTHY VALES, DAVID DRISCOLL, ROBERT  
2 LAPOINT, and DAVID MCKAIG, and for their answer to the plaintiff's complaint for damages  
3 and injunctive and declaratory relief on file herein, admit, deny and allege as follows:

4 1. Answering the allegations of numbered paragraphs 1, 3, 5, 6, 7, 8, 9, 14, 15, 16, 17,  
5 18 through 28, 35, 36, 37, 38, 39, 43, 50, 51, 55, 56, 120 of said complaint, defendants lack  
6 information and belief sufficient to admit or deny the allegations contained in said paragraphs, and,  
7 based upon such lack of information and belief, defendants deny said allegations.

8 2. Answering the allegations of numbered paragraphs 10, 11, 12, 13, 31, 32, 33, 34,  
9 52, and 53 of said complaint, defendants admit the allegations of said paragraphs.

10 3. Answering the allegations of numbered paragraphs 2, 4, 29, 30, 40, 41, 42, 44, 45,  
11 46, 47, 48, 49, 54, 57, 58, 59, 60, 51, 62, 64, 65, 66, 68, 70, 71, 72, 74, 75, 76, 78, 79, 81, 82, 84,  
12 85, 86, 88, 89, 90, 92, 93, 95, 96, 98, 99, 100, 102, 103, 105, 106, 107, 108, 110, 111, 112, 114,  
13 115, 116, 117, 118, and 119 of said complaint, defendants deny each and every and all of the  
14 allegations of said paragraphs and further deny that plaintiff has sustained any injuries, losses or  
15 damages of any kind or character as a result of any conduct on the part of these answering  
16 defendants.

17 4. Answering the allegations of paragraphs 63, 67, 73, 77, 80, 83, 87, 91, 94, 97, 101,  
18 104, 109, and 113 of said complaint, defendants incorporate their responses to the allegations of  
19 the paragraphs incorporated therein.

20 **SEPARATE AFFIRMATIVE DEFENSES**

21 **AS A FIRST, SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE TO THE**  
22 **COMPLAINT ON FILE HEREIN, AND TO EACH CAUSE OF ACTION THEREOF,** these  
23 answering defendants are informed and believe and thereon allege that plaintiffs and each of them  
24 were themselves careless and negligent in and about the matters alleged in the complaint, and that  
25 said carelessness and negligence on plaintiffs' own part proximately contributed to the happening  
26 of the incident and to the injuries, loss and damages complained of, if any there were, and said  
27 negligence shall diminish plaintiffs' recovery herein in direct proportion to the extent of such  
28

1 negligence under the doctrine of comparative negligence.

2       **AS A SECOND, SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE TO THE**  
3 **COMPLAINT ON FILE HEREIN, AND TO EACH CAUSE OF ACTION THEREOF**, these  
4 answering defendants are informed and believe and thereon allege that, prior to and at the time of  
5 the occurrence of the alleged incident which is the subject of plaintiffs' complaint, plaintiffs had  
6 knowledge, express or implied, of those matters alleged in the complaint; that plaintiffs and each  
7 of them did with the above-mentioned knowledge voluntarily and of his own free will place  
8 himself in an unsafe and dangerous position, and by reason thereof said plaintiff assumed the risk  
9 and all risks ordinarily incident thereto; and said assumption of risk bars recovery herein.

10       **AS A THIRD, SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE TO THE**  
11 **COMPLAINT ON FILE HEREIN, AND TO EACH CAUSE OF ACTION THEREOF**, these  
12 answering defendants are informed and believe and thereon allege that one or more plaintiffs failed  
13 to timely comply with the claim presentation requirements of the California Government Code  
14 and/or failed to file said complaint within the time delineated by all applicable statutes of  
15 limitations, including, but not limited to Code of Civil Procedure § 340.5 and Government Code §  
16 945.6.

17       **AS A FOURTH, SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE TO THE**  
18 **COMPLAINT ON FILE HEREIN, AND TO EACH CAUSE OF ACTION THEREOF**, these  
19 answering defendants are informed and believe and thereon allege that the claims in plaintiffs'  
20 complaint are barred by all governmental immunities, including, but not limited to, California  
21 Government Code §§ 815, 815.2, 815.6, 818, 818.8, 820.2, 820.4, and 822.2.

22       **AS A FIFTH, SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE TO THE**  
23 **COMPLAINT ON FILE HEREIN, AND TO EACH CAUSE OF ACTION THEREOF**, these  
24 answering defendants are informed and believe and thereon allege that neither the complaint nor  
25 any of its alleged causes of action state facts sufficient to constitute a cause of action against these  
26 answering defendants.

27       **AS A SIXTH, SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE TO THE**  
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1 **COMPLAINT ON FILE HEREIN, AND TO EACH CAUSE OF ACTION THEREOF**, these  
2 answering defendants are informed and believe and thereon allege that, the injuries, losses and  
3 damages, if any there were, allegedly sustained by plaintiffs were proximately caused by the  
4 conduct of other persons or entities who are not the agents of these defendants or any of them, and  
5 by reason thereof, any liability of these defendants, or any of them, herein shall be diminished,  
6 offset or abated by reason of said conduct.

7 **AS A SEVENTH, SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE TO**  
8 **THE COMPLAINT ON FILE HERE, AND TO EACH CAUSE OF ACTION THEREOF**,  
9 these answering defendants are informed and believe and thereon allege that by reason of  
10 plaintiffs' own acts and omissions, plaintiffs are estopped from seeking any recovery from  
11 defendants, and/or their claims are barred by the doctrine of unclean hands.

12 **AS AN EIGHTH, SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE TO**  
13 **THE UNVERIFIED COMPLAINT ON FILE HEREIN, AND TO EACH CAUSE OF**  
14 **ACTION THEREOF**, these answering defendants allege that the complaint, and each cause of  
15 action therein, is barred because any detention and/or of plaintiff by defendants or their employees  
16 was lawful, constitutional privileged and justified.

17 **AS A NINTH, SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE TO THE**  
18 **UNVERIFIED COMPLAINT ON FILE HEREIN, AND TO EACH CAUSE OF ACTION**  
19 **THEREOF**, these answering defendants allege that the complaint, and each cause of action  
20 therein, is barred because defendants were legally authorized to detain, search and incarcerate one  
21 or more plaintiffs.

22 **AS A TENTH, SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE TO THE**  
23 **UNVERIFIED COMPLAINT ON FILE HEREIN, AND TO EACH CAUSE OF ACTION**  
24 **THEREOF**, these answering defendants allege that the defendants and their employees had legal  
25 justification for all of their actions and omissions and therefore the complaint and each and every  
26 cause of action therein is barred.

27 **AS AN ELEVENTH, SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE TO**  
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1 **THE UNVERIFIED COMPLAINT ON FILE HEREIN, AND TO EACH CAUSE OF**  
2 **ACTION THEREOF**, these answering defendants are informed and believe and thereon allege  
3 that the complaint and each and every cause of action therein is barred because plaintiffs failed to  
4 mitigate their damages, if any there were.

5 **AS A TWELFTH, SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE TO**  
6 **THE UNVERIFIED COMPLAINT ON FILE HEREIN, AND TO EACH CAUSE OF**  
7 **ACTION THEREOF**, these answering defendants allege that the complaint fails to state a  
8 Federal civil rights claim against the defendants under the doctrine of *Monell v. Department of*  
9 *Social Services*, 436 U.S. 658 (1978).

10 **AS A THIRTEENTH, SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE TO**  
11 **THE UNVERIFIED COMPLAINT ON FILE HEREIN, AND TO EACH CAUSE OF**  
12 **ACTION THEREOF**, these answering defendants allege that the plaintiffs, and each of them,  
13 have not been damaged in any sum or sums, or otherwise, or at all, by reason of any act or  
14 omission by defendants.

15 **AS A FOURTEENTH, SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE**  
16 **TO THE UNVERIFIED COMPLAINT ON FILE HEREIN, AND TO EACH CAUSE OF**  
17 **ACTION THEREOF**, these answering defendants allege that the defendants and their employees  
18 are immune from any liability and protected against the burden of litigation under the doctrine of  
19 qualified immunity and the common law immunities protecting peace officers, correctional  
20 officers, prosecutors and public officials.

21 **AS A FIFTEENTH, SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE TO**  
22 **THE UNVERIFIED COMPLAINT ON FILE HEREIN, AND TO EACH CAUSE OF**  
23 **ACTION THEREOF**, these answering defendants allege that they are immune from liability for  
24 exemplary damages pursuant to provisions of section 818 of the California Government Code and  
25 by the U. S. Supreme Court's decision in *Newport v. Fact Concert, Inc.*, 453 U.S. 247.

26 **AS A SIXTEENTH, SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE TO**  
27 **THE UNVERIFIED COMPLAINT ON FILE HEREIN, AND TO EACH CAUSE OF**  
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1 **ACTION THEREOF**, these answering defendants allege that they are not liable for any acts or  
2 omissions of their employees which occurred outside of those employees' scope of employment.

3 **AS A SEVENTEENTH, SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE**  
4 **TO THE UNVERIFIED COMPLAINT ON FILE HEREIN, AND TO EACH CAUSE OF**  
5 **ACTION THEREOF**, these answering defendants are informed and believe and thereon allege  
6 that by conduct, representations and omissions, plaintiffs have waived, relinquished and/or  
7 abandoned any claim for relief against these defendants respecting the matters which are the  
8 subject of the complaint.

9 **AS AN EIGHTEENTH, SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE**  
10 **TO THE UNVERIFIED COMPLAINT ON FILE HEREIN, AND TO EACH CAUSE OF**  
11 **ACTION THEREOF**, these answering defendants are informed and believe and thereon allege  
12 that plaintiffs unnecessarily delayed in protecting the right or rights asserted and has unreasonably  
13 delayed in bringing this action, and are therefore guilty of laches and consequently are not entitled  
14 to the relief sought.

15 **AS A NINETEENTH, SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE TO**  
16 **THE UNVERIFIED COMPLAINT ON FILE HEREIN, AND TO EACH CAUSE OF**  
17 **ACTION THEREOF**, these answering defendants allege that at all times mentioned in the  
18 Complaint, defendants performed and discharged in good faith each and every obligation, if any,  
19 owed to plaintiffs.

20 **AS A TWENTIETH, SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE TO**  
21 **THE UNVERIFIED COMPLAINT ON FILE HEREIN, AND TO EACH CAUSE OF**  
22 **ACTION THEREOF**, these answering defendants allege that at all times material to this action,  
23 defendants and their employees had reasonable cause to act and acted properly in valid law  
24 enforcement activities.

25 **AS A TWENTY-FIRST, SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE**  
26 **TO THE UNVERIFIED COMPLAINT ON FILE HEREIN, AND TO EACH CAUSE OF**  
27 **ACTION THEREOF**, these answering defendants allege that at all times relevant to plaintiffs'

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1 Complaint herein, plaintiffs knowingly, voluntarily and willingly consented to any search, if, in  
2 fact, any search was performed.

3 **AS A TWENTY-SECOND, SEPARATE AND DISTINCT AFFIRMATIVE**  
4 **DEFENSE TO THE UNVERIFIED COMPLAINT ON FILE HEREIN, AND TO EACH**  
5 **CAUSE OF ACTION THEREOF**, these answering defendants allege that plaintiffs' claim is  
6 barred under the doctrine set forth in the U.S. Supreme Court's decision in *McMillian v. Monroe*  
7 *County* (1997) 117 S. Ct. 1734 and the Eleventh Amendment to the U.S. Constitution in that in  
8 engaging in the conduct complained of, if it occurred at all, defendants were acting in the  
9 capacities as officers of the State of California and not the County of Alameda.

10 **WHEREFORE**, these answering defendants pray as follows:

- 11 1. That plaintiffs take nothing by way of their complaint and that these answering  
12 defendants be dismissed hence;
- 13 2. For reasonable attorneys' fees;
- 14 3. For costs of suit incurred herein; and
- 15 4. For such other and further relief as the Court deems just and proper.

16 DATED: June 4, 2008

17 BOORNAZIAN, JENSEN & GARTHE  
18 A Professional Corporation

19 By: /s/ Jill P. Sazama, Esq.  
20 JILL P. SAZAMA, ESQ.  
21 Attorneys for Defendants  
22 COUNTY OF ALAMEDA,  
23 ALAMEDA COUNTY SHERIFF'S  
24 OFFICE, GREGORY AHERN,  
25 TIMOTHY VALES, DAVID  
26 DRISCOLL, ROBERT LAPOINT,  
27 and DAVID MCKAIG  
28

**DEMAND FOR JURY TRIAL**

These answering defendants hereby demand a jury trial for any and all causes of action that may be so tried.

DATED: June 4, 2008

BOORNAZIAN, JENSEN & GARTHE  
A Professional Corporation

By: /s/ Jill P. Sazama, Esq.  
JILL P. SAZAMA, ESQ.  
Attorneys for Defendants  
COUNTY OF ALAMEDA,  
ALAMEDA COUNTY SHERIFF'S  
OFFICE, GREGORY AHERN,  
TIMOTHY VALES, DAVID  
DRISCOLL, ROBERT LAPOINT,  
and DAVID MCKAIG

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**PROOF OF SERVICE BY ELECTRONIC SERVICE**

I, the undersigned, declare as follows:

I am employed in the County of Alameda, State of California. I am over the age of 18 years and not a party to the within action. My business address is 555 12th Street, Suite 1800, P. O. Box 12925, Oakland, California 94604-2925.

On the date indicated below, at the above-referenced business location, I served the **ANSWER TO COMPLAINT, DEMAND FOR JURY TRIAL** on the below-named party and caused said document to be transmitted using ECF as specified by General Order No. 45 to the following party:

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Sharon Seidenstein, Esq.  
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**Defendants Castro Valley Unified School District**

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

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Executed at Oakland, California, on June 04, 2008.

/s/ Carmen Kalt

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